

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                          |                                |
|--------------------------|--------------------------------|
| LEO B. MAGEE, SR.,       | §                              |
|                          | §                              |
| Interested Person Below- | § No. 252, 2006                |
| Appellant,               | §                              |
|                          | §                              |
| v.                       | § Court Below—Family Court     |
|                          | § of the State of Delaware,    |
| SHERRILYNN HIGGINS,      | § in and for New Castle County |
|                          | § File No. CN01-07400          |
| Respondent Below-        | § Petition No. 02-10514        |
| Appellee.                | §                              |

Submitted: June 26, 2006

Decided: July 10, 2006

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 10<sup>th</sup> day of July 2006, upon consideration of the appellee's motion to dismiss and the appellant's response thereto, it appears to the Court that:

(1) The appellant, Leo Magee, filed this appeal from an order of the Family Court, dated April 21, 2006, resolving visitation issues with respect to the appellee's minor daughter. Magee lives with the paternal grandmother of appellee's daughter. Although he was not a party to the custody and visitation proceedings in the Family Court, he claims standing to pursue the current appeal as an "interested person" under 10 Del. C. §

1052(b).<sup>1</sup> The appellee has moved to dismiss the appeal for Magee's lack of standing.

(2) After careful consideration of the motion to dismiss and the response thereto, the Court finds it manifest that Magee lacks standing to pursue this appeal. Although Section 1052(b) permits an "interested person" to pursue an appeal of a Family Court custody order, the statute does not negate the requirement that the "interested person" be a party to the Family Court proceedings.<sup>2</sup> Magee does not dispute that he was not a party to the Family Court proceedings. Accordingly, his appeal fails as a matter of law.

NOW, THEREFORE, IT IS ORDERED that the within appeal be DISMISSED for appellant's lack of standing to appeal the Family Court's order below.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>1</sup> Section 1052(b) provides that: "The child's parent, guardian, next friend or any interested person or agency at any time within 30 days after the date of such [custody] order, may appeal to the Supreme Court."

<sup>2</sup> See *Townsend v. Griffith*, 570 A.2d 1157, 1158 (Del. 1990).